

REMARKS

Upon entry of this Amendment, claims 60 to 78 will be pending in this application of which claim 60 is independent. Claims 1, 18 to 35, and 37 to 59 have been cancelled without prejudice or disclaimer to later re-entry (for instance in a continuing application).

Reconsideration and allowance of the present application is respectfully requested.

The present application is a divisional of U.S. Pat. Appl. Ser. No. 09/091,856, filed September 28, 1998 (now abandoned), which is a 371 of PCT/AU96/00839, filed December 24, 1996, which in turn claims priority to Australian Application No. PN 7372/95, filed December 29, 1995. The Examiner has refused to grant benefit of priority to the present application to Australian Application No. PN 7372/95. He alleges that the present application contains new matter with respect to the Australian application. The Applicants respectfully disagree for at least the following reasons.

Under 35 U.S.C. §365(b), "an international application designating the United States shall be entitled to the right of priority based on a prior foreign application". The Examiner has acknowledged priority of the present application to PCT/AU96/00839, filed December 24, 1996. The Applicants have fulfilled the obligation to submit a copy of the earlier national application by transmitting Australian Application No. PN 7372/95 (i.e., complied with Rule 17.1(a) of the PCT Regulations) to the International Bureau on 29 January 1997 in U.S. Pat. Appl. Ser. No. 09/091,856. Copies of the relevant papers are enclosed herewith. Therefore, the Applicants have complied with the requirements of 35 U.S.C. §119.

Claims 23 to 35 and 37 were objected to under 37 C.F.R. §1.75(c) as being in improper form. These claims have been cancelled.

A new substitute specification conforming to 37 C.F.R. §§1.121, 1.125(b), and 1.126 is attached herewith. The text of the specification as filed (pages 1 to 33) were deleted and replaced with the substitute specification (pages 1 to 24) enclosed herewith. The substitute specification contains paragraphs individually numbered using consecutive Arabic numerals, updated priority information, updated formatting and section titles, and correction of minor typographical errors. The Applicants aver that the substitute specification does not contain new matter and respectfully request its entry.

With respect to claims 44 to 62, these claims have been cancelled; the new claims start from claim number 60 and are consecutively numbered until claim number 78.

Inventor(s): O'HARA *et al.*
Serial Number: 09/938,649
Attorney Docket Number: 021058-0257402

Claims 38 to 40 stand rejected under 35 U.S.C. §112, second paragraph, as non statutory. These claims have been cancelled thus rendering this rejection moot.

With respect to the Restriction Requirement, the Applicants elect Group III, claims 60 to 78 (original claims 41 to 59). As indicated earlier, all other claims have been cancelled. The inventorship of the pending claims is in compliance with 37 C.F.R. 1.48(b).

All objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited.

Attached hereto is a marked-up version of the changes made to the specification and the claims by the current amendment. The attached Appendix is captioned "Version with markings to show changes made".

Respectfully submitted,

PILLSBURY WINTHROP, LLP

By: 

Paul L. Sharer

Registration No.: 36,004

Direct Line: 703-905-2180

PLS\GP

1600 Tysons Boulevard
McLean, VA 22102
Telephone: 703-905-2000
Facsimile: 703-905-2500

APPENDIX
VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION:

The text of the specification (pages 1 to 33), as filed, was deleted in its entirety.

The text of the substitute specification (pages 1 to 24) was added. The changes made to the original specification by the substitute specification are as follows:

page 1, just under the title of the original specification:

This is a divisional of U.S. Pat. Appl. Ser. No. 09/091,856, filed September 28, 1998 (now abandoned), which is a 371 of PCT/AU96/00839, filed December 24, 1996, which in turn claims priority to Australian Application No. PN 7372/95, filed December 29, 1995.

page 5, line 37 of the original specification:

nitroso **[nitross]** and

page 13, line 7 of the original specification:

sorbitan mono-oleate **[mon-oleate]**

page 13, line 16 of the original specification:

used to the minimum **[minium]**

page 15, line 20 of the original specification:

pH **[Ph]** of the

page 16, line 7 of the original specification:

over a 30-second **[30 second]** period

page 25, line 15 of the original specification:

method as described in Example 1 **[example 1]** but with

Inventor(s): O'HARA *et al.*
Serial Number: 09/938,649
Attorney Docket Number: 021058-0257402

page 27, line 11 of the original specification:
over a 30-second [30 second] period.

page 29, line 1 of the original specification:
Example 1 [example 1] and the

IN THE CLAIMS:

Claims 1, 18 to 35, and 37 to 59 were deleted.

Claims 60 to 78 were added.

PCT

REQUEST

The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty.

For receiving Office use only

International Application No.

International Filing Date

Name of receiving Office and "PCT International Application"

Applicant's or agent's file reference
(if desired) (12 characters maximum)

Box No. I TITLE OF INVENTION

GASSER COMPOSITION AND METHOD OF GASSING

Box No. II APPLICANT

Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

ICI AUSTRALIA OPERATIONS PTY LTD
1 NICHOLSON STREET
MELBOURNE, Victoria 3003
AUSTRALIA

☐ This person is also inventor.

Telephone No.

03 9665 7111

Facsimile No.

03 9665 7573

Teleprinter No.

State (i.e. country) of nationality:

AUSTRALIA

State (i.e. country) of residence:

AUSTRALIA

This person is applicant for the purposes of:

☐

all designated States

☒

all designated States except the United States of America

☐

the United States of America only

☐

the States indicated in the Supplemental Box

Box No. III FURTHER APPLICANT(S) AND/OR (FURTHER) INVENTOR(S)

Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

O'HARA, Helen
5 Wakool Avenue
Deer Park, Victoria 3023
AUSTRALIA

This person is:

☐ applicant only☒ applicant and inventor☐ inventor only (If this check-box is marked, do not fill in below.)

State (i.e. country) of nationality:

AUSTRALIA

State (i.e. country) of residence:

AUSTRALIA

This person is applicant for the purposes of:

☐

all designated States

☐

all designated States except the United States of America

☒

the United States of America only

☐

the States indicated in the Supplemental Box

☒ Further applicants and/or (further) inventors are indicated on a continuation sheet.

Box No. IV AGENT OR COMMON REPRESENTATIVE; OR ADDRESS FOR CORRESPONDENCE

The person identified below is hereby/has been appointed to act on behalf of the applicant(s) before the competent International Authorities as:

☒

agent

☐

common representative

Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

ROLLS, Dr Carolyn Lesley
Griffith Hack
509 St Kilda Road
Melbourne, Victoria 3004
AUSTRALIA

Telephone No.

03 9243 8300

Facsimile No.

03 9243 8333

Teleprinter No.

☐ Mark this check-box where no agent or common representative is/has been appointed and the space above is used instead to indicate a special address to which correspondence should be sent.

Continuation of Box No. III FURTHER APPLICANTS AND/OR (FURTHER) INVENTORS

If none of the following sub-boxes is used, this sheet is not to be included in the request.

Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

SMITH, Jeremy Guy Breakwell
29 Croft Road
Eleebana, New South Wales 2282
AUSTRALIA

Added 6/1/97

This person is:

- ☐ applicant only
☒ applicant and inventor
☐ inventor only (If this check-box is marked, do not fill in below.)

State (i.e. country) of nationality:

BRITISH

State (i.e. country) of residence:

This person is applicant for the purposes of:

- ☐ all designated States ☐ all designated States except the United States of America ☒ the United States of America only ☐ the States indicated in the Supplemental Box

Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

STOW, David
103 Main Road
Medowie, New South Wales 2318
AUSTRALIA

This person is:

- ☐ applicant only
☒ applicant and inventor
☐ inventor only (If this check-box is marked, do not fill in below.)

State (i.e. country) of nationality:

BRITISH

State (i.e. country) of residence:

This person is applicant for the purposes of:

- ☐ all designated States ☐ all designated States except the United States of America ☒ the United States of America only ☐ the States indicated in the Supplemental Box

Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

YATES, David Edwin
141 Barkly Street
East Brunswick, Victoria 3057
AUSTRALIA

This person is:

- ☐ applicant only
☒ applicant and inventor
☐ inventor only (If this check-box is marked, do not fill in below.)

State (i.e. country) of nationality:

AUSTRALIA

State (i.e. country) of residence:

AUSTRALIA

This person is applicant for the purposes of:

- ☐ all designated States ☐ all designated States except the United States of America ☒ the United States of America only ☐ the States indicated in the Supplemental Box

Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

This person is:

- ☐ applicant only
☐ applicant and inventor
☐ inventor only (If this check-box is marked, do not fill in below.)

State (i.e. country) of nationality:

State (i.e. country) of residence:

This person is applicant for the purposes of:

- ☐ all designated States ☐ all designated States except the United States of America ☐ the United States of America only ☐ the States indicated in the Supplemental Box

☐ Further applicants and/or (further) inventors are indicated on another continuation sheet.

Box No.V DESIGNATION OF STATES

The following designations are hereby made under Rule 4.9(a) (mark the applicable check-boxes; at least one must be marked):

Regional Patent

- ☐ AP ARIPO Patent: KE Kenya, LS Lesotho, MW Malawi, SD Sudan, SZ Swaziland, UG Uganda, and any other State which is a Contracting State of the Harare Protocol and of the PCT
- ☐ EA Eurasian Patent: AM Armenia, AZ Azerbaijan, BY Belarus, KG Kyrgyzstan, KZ Kazakstan, MD Republic of Moldova, RU Russian Federation, TJ Tajikistan, TM Turkmenistan, and any other State which is a Contracting State of the Eurasian Patent Convention and of the PCT
- ☐ EP European Patent: AT Austria, BE Belgium, CH and LI Switzerland and Liechtenstein, DE Germany, DK Denmark, ES Spain, FI Finland, FR France, GB United Kingdom, GR Greece, IE Ireland, IT Italy, LU Luxembourg, MC Monaco, NL Netherlands, PT Portugal, SE Sweden, and any other State which is a Contracting State of the European Patent Convention and of the PCT
- ☐ OA OAPI Patent: BF Burkina Faso, BJ Benin, CF Central African Republic, CG Congo, CI Côte d'Ivoire, CM Cameroon, GA Gabon, GN Guinea, ML Mali, MR Mauritania, NE Niger, SN Senegal, TD Chad, TG Togo, and any other State which is a member State of OAPI and a Contracting State of the PCT (if other kind of protection or treatment desired, specify on dotted line)

National Patent (if other kind of protection or treatment desired, specify on dotted line):

- | | |
|---|---|
| <input type="checkbox"/> AL Albania | <input type="checkbox"/> LV Latvia |
| <input type="checkbox"/> AM Armenia | <input type="checkbox"/> MD Republic of Moldova |
| <input type="checkbox"/> AT Austria | <input type="checkbox"/> MG Madagascar |
| <input checked="" type="checkbox"/> AU Australia | <input type="checkbox"/> MK The former Yugoslav Republic of Macedonia |
| <input type="checkbox"/> AZ Azerbaijan | |
| <input type="checkbox"/> BB Barbados | <input type="checkbox"/> MN Mongolia |
| <input type="checkbox"/> BG Bulgaria | <input type="checkbox"/> MW Malawi |
| <input type="checkbox"/> BR Brazil | <input type="checkbox"/> MX Mexico |
| <input type="checkbox"/> BY Belarus | <input type="checkbox"/> NO Norway |
| <input checked="" type="checkbox"/> CA Canada | <input checked="" type="checkbox"/> NZ New Zealand |
| <input type="checkbox"/> CH and LI Switzerland and Liechtenstein | <input type="checkbox"/> PL Poland |
| <input checked="" type="checkbox"/> CN China | <input type="checkbox"/> PT Portugal |
| <input type="checkbox"/> CZ Czech Republic | <input type="checkbox"/> RO Romania |
| <input type="checkbox"/> DE Germany | <input type="checkbox"/> RU Russian Federation |
| <input type="checkbox"/> DK Denmark | <input type="checkbox"/> SD Sudan |
| <input type="checkbox"/> EE Estonia | <input type="checkbox"/> SE Sweden |
| <input type="checkbox"/> ES Spain | <input type="checkbox"/> SG Singapore |
| <input type="checkbox"/> FI Finland | <input type="checkbox"/> SI Slovenia |
| <input type="checkbox"/> GB United Kingdom | <input type="checkbox"/> SK Slovakia |
| <input type="checkbox"/> GE Georgia | <input type="checkbox"/> TJ Tajikistan |
| <input type="checkbox"/> HU Hungary | <input type="checkbox"/> TM Turkmenistan |
| <input type="checkbox"/> IL Israel | <input type="checkbox"/> TR Turkey |
| <input type="checkbox"/> IS Iceland | <input type="checkbox"/> TT Trinidad and Tobago |
| <input checked="" type="checkbox"/> JP Japan | <input type="checkbox"/> UA Ukraine |
| <input type="checkbox"/> KE Kenya | <input type="checkbox"/> UG Uganda |
| <input type="checkbox"/> KG Kyrgyzstan | <input checked="" type="checkbox"/> US United States of America |
| <input type="checkbox"/> KP Democratic People's Republic of Korea | |
| <input checked="" type="checkbox"/> KR Republic of Korea | <input type="checkbox"/> UZ Uzbekistan |
| <input type="checkbox"/> KZ Kazakstan | <input checked="" type="checkbox"/> VN Viet Nam |
| <input type="checkbox"/> LK Sri Lanka | |
| <input type="checkbox"/> LR Liberia | |
| <input type="checkbox"/> LS Lesotho | |
| <input type="checkbox"/> LT Lithuania | |
| <input type="checkbox"/> LU Luxembourg | |

Check-boxes reserved for designating States (for the purposes of a national patent) which have become party to the PCT after issuance of this sheet:

In addition to the designations made above, the applicant also makes under Rule 4.9(b) all designations which would be permitted under the PCT except the designation(s) of _____

The applicant declares that those additional designations are subject to confirmation and that any designation which is not confirmed before the expiration of 15 months from the priority date is to be regarded as withdrawn by the applicant at the expiration of that time limit. (Confirmation of a designation consists of the filing of a notice specifying that designation and the payment of the designation and confirmation fees. Confirmation must reach the receiving Office within the 15-month time limit.)

Box No. VI PRIORITY CLAIM

Further priority claims are indicated ☐ Supplemental Box ☐

The priority of the following earlier application(s) is hereby claimed:

Country (in which, or for which, the application was filed)	Filing Date (day/month/year)	Application No.	Office of filing (only for regional or international application)
item (1) AUSTRALIA	29 December 1995	PN 7372	
item (2)			
item (3)			

Mark the following check-box if the certified copy of the earlier application is to be issued by the Office which for the purposes of the present international application is the receiving Office (a fee may be required):

☒ The receiving Office is hereby requested to prepare and transmit to the International Bureau a certified copy of the earlier application(s) identified above as item(s): 1

Box No. VII INTERNATIONAL SEARCHING AUTHORITY

Choice of International Searching Authority (ISA) (If two or more International Searching Authorities are competent to carry out the international search, indicate the Authority chosen; the two-letter code may be used): ISA /

Earlier search Fill in where a search (international, international-type or other) by the International Searching Authority has already been carried out or requested and the Authority is now requested to base the international search, to the extent possible, on the results of that earlier search. Identify such search or request either by reference to the relevant application (or the translation thereof) or by reference to the search request.

Country (or regional Office): Date (day/month/year): Number:

Box No. VIII CHECK LIST

This international application contains the following number of sheets:

1. request : 5 sheets
 2. description : 33 sheets
 3. claims : 8 sheets
 4. abstract : 1 sheets
 5. drawings : 0 sheets
 Total : 47 sheets

This international application is accompanied by the item(s) marked below:

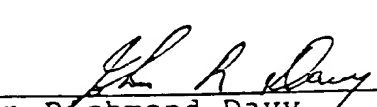
1. ☐ separate signed power of attorney
 2. ☐ copy of general power of attorney
 3. ☐ statement explaining lack of signature
 4. ☐ priority document(s) identified in Box No. VI as item(s):
 5. ☐ fee calculation sheet
 6. ☐ separate indications concerning deposited microorganisms
 7. ☐ nucleotide and/or amino acid sequence listing (diskette)
 8. ☐ other (specify):

Figure No. of the drawings (if any) should accompany the abstract when it is published.

Box No. IX SIGNATURE OF APPLICANT OR AGENT

each signature, indicate the name of the person signing and the capacity in which the person signs (if such capacity is not obvious from reading the request).

ICI AUSTRALIA OPERATIONS PTY LTD


 Dr John Richmond Davy
 Duly Authorised Officer of
 ICI Australia Operations Pty Ltd

29 January 1997
 Date

For receiving Office use only

1. Date of actual receipt of the purported international application:	2. Drawings:
3. Corrected date of actual receipt due to later but timely received papers or drawings completing the purported international application:	<input type="checkbox"/> received:
4. Date of timely receipt of the required corrections under PCT Article 11(2):	<input type="checkbox"/> not received:
5. International Searching Authority specified by the applicant: ISA /	6. <input type="checkbox"/> Transmittal of search copy delayed until search fee is paid

For International Bureau use only

Date of receipt of the record copy by the International Bureau:

Use this box in the following cases:

1. If, in any of the Boxes, the space is insufficient to furnish all the information:

in particular:

- (i) if more than two persons are involved as applicants and/or inventors and no "continuation sheet" is available;
- (ii) if, in Box No. II or in any of the sub-boxes of Box No. III, the indication "the States indicated in the Supplemental Box" is checked;
- (iii) if, in Box No. II or in any of the sub-boxes of Box No. III, the inventor or the inventor/applicant is not inventor for the purposes of all designated States or for the purposes of the United States of America;
- (iv) if, in addition to the agent(s) indicated in Box No. IV, there are further agents;
- (v) if, in Box No. V, the name of any State (or OAPI) is accompanied by the indication "patent of addition," or "certificate of addition," or if, in Box No. V, the name of the United States of America is accompanied by an indication "Continuation" or "Continuation-in-part";
- (vi) if there are more than three earlier applications whose priority is claimed;

in such case, write "Continuation of Box No. ..." [indicate the number of the Box] and furnish the information in the same manner as required according to the captions of the Box in which the space was insufficient;

in such case, write "Continuation of Box No. III" and indicate for each additional person the same type of information as required in Box No. III;

in such case, write "Continuation of Box No. II" or "Continuation of Box No. III" or "Continuation of Boxes No. II and No. III" (as the case may be), indicate the name of the applicant(s) involved and, next to (each) such name, the State(s) (and/or, where applicable, ARIPO, Eurasian, European or OAPI patent) for the purposes of which the named person is applicant;

in such case, write "Continuation of Box No. II" or "Continuation of Box No. III" or "Continuation of Boxes No. II and No. III" (as the case may be), indicate the name of the inventor(s) and, next to (each) such name, the State(s) (and/or, where applicable, ARIPO, Eurasian, European or OAPI patent) for the purposes of which the named person is inventor;

in such case, write "Continuation of Box No. IV" and indicate for each further agent the same type of information as required in Box No. IV;

in such case, write "Continuation of Box No. V" and the name of each State involved (or OAPI), and after the name of each such State (or OAPI), the number of the parent title or parent application and the date of grant of the parent title or filing of the parent application;

in such case, write "Continuation of Box No. VI" and indicate for each additional earlier application the same type of information as required in Box No. VI.

2. If the applicant claims, in respect of any designated Office, the benefits of provisions of the national law concerning non-prejudicial disclosures or exceptions to lack of novelty:

in such case, write "Statement Concerning Non-Prejudicial Disclosures or Exceptions to Lack of Novelty" and furnish that statement below.

Continuation of Box No. IX

Helen O'Hara

3-2-97

Date

David Stow

15-01-97

Date

David Edwin Yates

6/2/97

Date

PCT

WORLD INTELLECTUAL PROPERTY ORGANIZATION
International Bureau



INTERNATIONAL APPLICATION PUBLISHED UNDER THE PATENT COOPERATION TREATY (PCT)

(1) International Patent Classification ⁶ : C06B 45/00, C06D 5/08, C06B 31/28		A1	(11) International Publication Number: WO 97/24299
			(43) International Publication Date: 10 July 1997 (10.07.97)
(21) International Application Number: PCT/AU96/00839			(81) Designated States: AU, CA, CN, JP, KR, NZ, US, VN. Published With international search report.
(22) International Filing Date: 24 December 1996 (24.12.96)			
(30) Priority Data: PN 7372 29 December 1995 (29.12.95) AU			
(71) Applicant (for all designated States except US): ICI AUSTRALIA OPERATIONS PTY. LTD. [AU/AU]; 1 Nicholson Street, Melbourne, VIC 3003 (AU).			
(72) Inventors; and (75) Inventors/Applicants (for US only): O'HARA, Helen [AU/AU]; 5 Wakool Avenue, Deer Park, VIC 3023 (AU). STOW, David [GB/AU]; 103 Main Road, Medowie, NSW 2318 (AU). YATES, David, Edwin [AU/AU]; 141 Barkly Street, East Brunseick, VIC 3057 (AU).			
(74) Agent: ROLLS, Carolyn, Lesley; Griffith Hack, 509 St. Kilda Road, Melbourne, VIC 3004 (AU).			
(54) Title: GASSER COMPOSITION AND METHOD OF GASSING			
(57) Abstract The present invention provides a gasser solution for sensitising an emulsion to form a gassed emulsion explosive composition having a discontinuous aqueous phase comprising inorganic oxygen releasing salts, a continuous water immiscible organic phase and an emulsifier, the emulsifier comprising a headgroup having a functional moiety which is vulnerable to attack by a nitroso species and wherein the gasser solution comprises a solution of an inorganic nitrite, an ammonium species and optionally an accelerator.			